Supreme Court, U.S.
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No. 96-408

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1996

FREDDIE B. LEXIE, JR., et al.
Petitioner,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY
Respondent.

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FREDDIE B. LEXIE, JR., etc.
Petitioner,

v.

LIBERTY MUTUAL INSURANCE COMPANY,
Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Virginia

# BRIEF IN OPPOSITION

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30 pp

## Questions Presented

I.

WHETHER THE PETITION SHOULD BE DENIED ON THE BASIS THAT PETITIONER HAS NO STANDING TO SEEK REVIEW OF THE VIRGINIA SUPREME COURT'S OPINION IN HIS INDIVIDUAL CAPACITY BECAUSE PETITIONER FAILED TO SEEK APPELLATE REVIEW IN THE VIRGINIA SUPREME COURT.

II.

WHETHER THE VIRGINIA SUPREME COURT'S DECISION TO APPLY NORTH CAROLINA LAW VIOLATED THE DUE PROCESS AND FULL FAITH AND CREDIT CLAUSES WHERE THERE WERE SIGNIFICANT CONTACTS WITH NORTH CAROLINA AND THE APPLICATION OF NORTH CAROLINA LAW WAS NOT ARBITRARY OR UNREASONABLE.

III.

WHETHER THE PETITION SHOULD BE DENIED FOR FAILURE TO PRESENT A FEDERAL QUESTION WHERE THE VIRGINIA SUPREME COURT'S DECISION TO APPLY NORTH CAROLINA LAW IS PURELY A QUESTION OF LOCAL COMMON LAW.

IV.

WHETHER THE PETITION SHOULD BE DENIED BECAUSE THE APPLICATION OF DISTRICT OF COLUMBIA LAW PROVIDES NO RELIEF TO PETITIONER.

## List of Interested Parties

The petitioners are Freddie B. Lexie, Jr., and Freddie B. Lexie, Jr., Executor of the Estate of Patricia Dian Bigby Lexie.

The Respondents are State Farm Mutual Automobile Insurance Company and Liberty Mutual Insurance Company.

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# BRIEF IN OPPOSITION

## Opinions Below

Respondent Liberty Mutual Insurance Company requests that this Court deny the Petition for Writ of Certiorari seeking review of an opinion of the Supreme Court of Virginia reported at 469 S.E.2d 61 (Va. 1996). For the convenience of this Court, all citations to the opinion will be to the opinion attached hereto as Appendix A.

## Statement of Jurisdiction

This Court cannot properly exercise jurisdiction over this case pursuant to 28 U.S.C. § 1257(a). Mr. Lexie, in his individual capacity, has no jurisdictional standing to appeal the Order of the Supreme Court of Virginia. Further, Petitioners fail to set forth facts sufficient to establish any constitutional violation.

## Statement of the Case

In November 1991, Patricia Dian Bigby Lexie was fatally injured in the District of Columbia when shot by an occupant of a motor vehicle travelling on Interstate 295. Mrs. Lexie was a passenger in a vehicle owned and operated by her husband, Freddie B. Lexie and insured by State Farm Mutual Automobile Insurance Company. At the time of the accident, the Lexies resided in the City of Alexandria and Mrs. Lexie maintained a separate residence in North Carolina. At that time, another automobile liability policy issued in North Carolina by Liberty Mutual Insurance Company to Mrs. Lexie and covering a vehicle garaged in North Carolina was in effect.

Petitioners brought suit against the gunman and the owner and operator of the vehicle in which he was a passenger in the United States District Court for the District of Columbia on November 16, 1992. Having failed to respond within thirty (30) days, defendants were in default. Default judgments were obtained against these individuals on July 7, 1994.

After these individuals were in default and prior to the entry of judgment, Liberty Mutual filed a declaratory judgment action against the Lexies in the Circuit Court for

the City of Alexandria, Virginia. Specifically, Liberty Mutual sought an order declaring that the Estate and Mr. Lexie, individually, were not entitled to coverage under its policy for the injuries and damages stemming from the November 16, 1991 shooting. The Lexies answered, asking the Circuit Court for an Order awarding them coverage.

Following a hearing, Liberty Mutual's Motion for Summary Judgment was granted by letter opinion, dated September 6, 1994. This letter opinion was memorialized into an Order dated December 12, 1994.

A Notice of Appeal was subsequently filed on or about January 9, 1995. As an appeal is not granted as a matter of right in Virginia, a Petition for Appeal to the Supreme Court of Virginia was filed March 13, 1995, on behalf of the Estate of Patricia Dian Bigby Lexie. The petition noted that:

> This appeal [is] limited to the claim of Freddie B. Lexie, Jr., as personal representative of the Estate of Patricia Dian Bigby Lexie, his late wife. Mr. Lexie does not dispute that he has no coverage for himself, personally, under his late wife's Liberty Mutual contract which is the subject of this appeal. (App. B at 10).

The Estate's Petition for Appeal was subsequently granted and oral argument proceeded before the Supreme Court of Virginia on March 1, 1996.[1]

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[1] Prior to oral argument, Mr. Lexie moved the Court for leave to be identified as a party appellant to that litigation. The motion was denied.

On April 19, 1996, the Supreme Court of Virginia issued its opinion and order affirming the Circuit Court's award of summary judgment to Liberty Mutual. (App. A at 1). On May 19, 1996, petitioners filed a petition for rehearing with the Supreme Court of Virginia which was denied on June 7, 1996. (Appendix C to the Petition for Writ of Certiorari).

**Reasons for Denying the Writ**

## I. MR. LEXIE DOES NOT HAVE STANDING TO SEEK REVIEW OF THE OPINION OF THE SUPREME COURT OF VIRGINIA IN HIS INDIVIDUAL CAPACITY.

On March 13, 1995, a Petition for Appeal was filed in the Supreme Court of Virginia seeking review of the award of summary judgment in favor of Liberty Mutual and against the Estate of Patricia Dian Bigby Lexie. An appeal was granted to the Estate and that appeal was heard and denied by the Supreme Court of Virginia, pursuant to its opinion dated April 19, 1996.

Rule 5:17 of the Rules of the Supreme Court of Virginia (1950) require that in every case in which the appellate jurisdiction of that Court is invoked, a petition of appeal must be filed with the Clerk of the Court not more than three (3) months after entry of the judgment appealed from. This time limitation is mandatory and cannot be waived. *See, Condrey v. Childress*, 127 S.E.2d 150 (1962).

Further, the Rule requires that the appellant list its "Assignments of Error" in the petition, identifying the specific errors in the rulings of the trial court for which the appellant seeks review. Particularly, the Rule provides that

"[o]nly errors assigned in the petition for appeal will be noticed by this Court." S.Ct. Va. R. 5:17(c).

The Estate's Petition for Appeal was very specific. In its Statement of the Nature of the Case and Proceedings Below, the Appellant stated:

> This appeal follows, limited to the claim of Freddie B. Lexie, Jr., as personal representative of the Estate of Patricia Dian Bigby Lexie, his late wife. Mr. Lexie does not dispute that he had no coverage for himself, personally, under his late wife(s) Liberty Mutual contract which is the subject of this Appeal.

(App. B at 10) (emphasis added).

Mr. Lexie cannot now, in his individual capacity, seek review of this matter by the United States Supreme Court. Mr. Lexie never sought appellate review of the circuit court's grant of summary judgment in the Respondent's favor on December 12, 1994. He was, thus, not a party to an appeal with this Respondent. (See App. A at 4). Having not sought appellate review in the Supreme Court of Virginia, Mr. Lexie is precluded from seeking review here and cannot invoke this Court's jurisdiction.

## II. THE DECISION TO APPLY NORTH CAROLINA LAW DID NOT VIOLATE THE FULL FAITH AND CREDIT CLAUSE NOR THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT.

Apparently relying on *Allstate Ins. Co. v. Hague*, 449 U.S. 302 (1981), Petitioner suggests that the Virginia

supreme court's decision to apply North Carolina law to the interpretation of Mrs. Lexie's Liberty Mutual Insurance Company policy violated the Due Process Clause. Petitioner further contends that said application failed to provide Full Faith and Credit to the laws of the District of Columbia. A review of *Allstate*, however, demonstrates the reasons why Petitioner's interpretation of that decision is misapplied.

In *Allstate*, the Minnesota Supreme Court applied Minnesota's choice-of-law rules to interpret an insurance policy issued, executed, and delivered in the State of Wisconsin regarding an accident which occurred in the State of Wisconsin. *Id.* at 306. Seeking appellate review, the petitioner argued that the Minnesota court violated the Full Faith and Credit Clause as well as the Due Process Clause of the 14th Amendment in failing to apply Wisconsin's law in interpreting the Wisconsin insurance contract at issue. *Id.* at 304. Noting that the Minnesota Court's decision to apply Minnesota law was unsound as a matter of conflicts law, Justice Stevens, in his concurring opinion, concluded that, "[n]o threat to national unity or Wisconsin's sovereignty ensued from allowing the substantive question [as to the meaning of the insurance contract] to be determined by the law of another state." *Id.* at 324. Moreover, this Court found that Minnesota's application of its own law raised no serious question of fairness and that the decision did not violate due process because the contracting parties' reasonable expectations were not frustrated; the decision was consistent because it did not result in unfairness to either litigant. *Id.* at 331.

Importantly, this Court noted that, "a set of facts giving rise to a lawsuit, or a particular issue within a lawsuit, may justify, in constitutional terms, application of the law of more than one jurisdiction." *Id.* at 307 (citations

omitted). This Court found that a forum state may have to select one law from among the laws of several jurisdictions which would have contact with the controversy at issue. *Id.* at 308.

In evaluating the due process issue, a court must consider the contacts of the state whose law was applied with the parties and with the occurrence of the transaction giving rise to this litigation. *Id.* (*citing Clay v. Sun Ins. Office, Ltd.*, 377 U.S. 179, 183 (1964)). In the instant case, the application of North Carolina law was appropriate.

The Liberty Mutual Insurance Company policy at issue in this case was issued, executed, sold, and delivered in the State of North Carolina. It covered an automobile garaged in the State of North Carolina. The Petitioners have admitted that Mrs. Lexie maintained a separate residence in the State of North Carolina. Conversely, the only contact the District of Columbia had with this incident was that it was the situs of the injury. Applying the standard required by this Court, it is clear that it was appropriate for the Virginia Supreme Court to interpret the Liberty Mutual policy according to North Carolina law.

To succeed in their due process claim, Petitioners must prove that the application of North Carolina law was "so arbitrary or unreasonable as to amount to a denial of due process." *Alaska Packers Ass'n v. Indus. Accident Comm'n*, 294 U.S. 532, 542 (1935).[2] Clearly, in this case, North

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[2] In *Alaska Packers*, the Court found that there had been no demonstration of a violation of the Full Faith and Credit Clause since California's interest in applying its own law was no less than Alaska's despite the fact that injury complained of in *Alaska Packers* occurred in Alaska. *Alaska Packers*, 294 U.S. at 547-8, 549-50.

Carolina has a significant interest in seeing that its law is used to interpret insurance policies issued, executed, sold, and delivered in its own State. This Court has held:

> [F]or a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or a significant aggregation of contacts, creating state interests such that choice of its law is neither arbitrary nor fundamentally unfair.

*Allstate*, 449 U.S. at 312-3.

Given that standard, it is clear it was appropriate for the Supreme Court of Virginia to apply the law of North Carolina, as North Carolina clearly had a "significant aggregation of contacts creating state interests".[3] *Id.* It is this significant aggregation of contacts with the parties and the occurrence which created state interest such that the application of North Carolina law was neither arbitrary nor fundamentally unfair. Petitioners have failed to demonstrate any infringement upon the interest of the District of Columbia in application of North Carolina law. Furthermore, Petitioners have not set forth any argument suggesting that the sovereignty of the District of Columbia has been threatened by the application of the North Carolina law.

Since Petitioners have failed to demonstrate either, there is no question that the choice of North Carolina law by

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[3] Notably, this Court has found that, "an automobile accident need not occur within a particular jurisdiction for that jurisdiction to be connected to the occurrence." *Allstate*, 449 U.S. at 314.

the Supreme Court of Virginia did not violate the Due Process Clause or the Full Faith and Credit Clause.[4]

## III. THE PETITION DOES NOT PRESENT A FEDERAL QUESTION.

Petitioners argue that the Virginia Supreme Court's choice-of-law decision to apply the law of North Carolina in analyzing the Liberty Mutual Insurance Company policy was flawed; this, however, does not present a federal question. The Petition presents a challenge to the common law application of choice-of-law principals by the Supreme Court of Virginia which does not present a question meriting review by the United States Supreme Court.

In *Allstate*, Justice Stevens, in his concurring opinion, found:

> It is not this Court's function to establish and impose upon state courts a federal choice-of-law rule, nor is it our function to ensure that state courts correctly apply whatever choice-of-law rules they have themselves adopted. Our authority may be exercised in the choice-of-law area only to prevent a violation

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[4] Justice Stevens, in his concurrence, noted that:

> The fact that a choice-of-law decision may be unsound as a matter of conflicts law does not necessarily implicate the federal concerns embodied in the Full Faith and Credit Clause. Rather, in my opinion, the Clause should not invalidate a state court's choice of forum law unless that choice threatens the federal interest in national unity by unjustifiably infringing upon the legitimate interests of another state." *Allstate*, 449 U.S. at 323.

> of the Full Faith and Credit or the Due Process Clause."

*Id.* at 332. (citations omitted).

Quoting from a previous rejection of a similar due process challenge, he noted:

> The most that the plaintiff in error can say is that the state court made a mistaken application of doctrines of the conflict of laws in deciding that the cancellation of a land contract is governed by the law of the situs instead of the place of making and performance. But that, being purely a question of local common law, is a matter with which this Court is not concerned.

*Id.* (quoting *Kryger v. Wilson*, 242 U.S. 171, 176 (1916)).

Petitioners herein argue that there was a mistake in the application of the choice-of-law doctrine in deciding that the interpretation of an insurance contract is governed by the place of making and performance rather than the law of the situs of the injury. *Kryger* demonstrates that this is not a question about which the Supreme Court of the United States is concerned. Having presented merely a common law question, the Petition should be denied.

## IV. EVEN IF THE LAW OF THE DISTRICT OF COLUMBIA WERE APPLIED, IT WOULD AFFORD NO RELIEF TO THE PETITIONERS.

Petitioners' argument that District of Columbia law would require Liberty Mutual to provide coverage in this case is inaccurate. D.C. Code Ann. § 35-2106(f)(2) (1981), provides:

> Each insurer selling motor vehicle insurance in the District with respect to any motor vehicle registered or principally garaged in the District shall include coverage for bodily injury or death in amounts of $25,000 per person injured in any 1 accident, or $50,000 for all persons injured in any 1 accident, and coverage for property damage in the amount of $5,000 for property damage in any 1 accident for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles.

As the Court will note, the mandatory uninsured motorist protection only applies to each insurer selling motor vehicle insurance in the District with respect to any motor vehicle registered or principally garaged in the District. In this case, the Liberty Mutual policy was a North Carolina insurance policy sold, issued, executed, and delivered in the State of North Carolina, covering a vehicle garaged and maintained in North Carolina. As Liberty Mutual did not sell its policy nor did it cover any vehicle in the District of Columbia, this section is wholly inapplicable to the Respondent.

Moreover, D.C. Code Ann. § 35-2103 (1981) provides:

> (b) *Nonresidents of District owning or operating motor vehicles in District.*
>
> (1) A person who is not a resident of the District who owns a motor vehicle shall not operate the motor vehicle, or permit the

> motor vehicle to be operated in the District, unless insurance required by § 35-2106 is provided and maintained during the time that the motor vehicle is present in the District.

As a review of this section makes clear, it applies only to non-residents who own or operate a motor vehicle within the confines of the District of Columbia. In this case, Patricia Dian Bigby Lexie did not own or operate any vehicle inside the District of Columbia. Mrs. Lexie did not permit any vehicle which she owned to be operated inside the District of Columbia. The only vehicle operated within the District was the vehicle solely owned and operated by Freddie Lexie and insured by State Farm Mutual Automobile Insurance Company. The statute referred to by the Petitioners as mandating coverage would place no requirement on Liberty Mutual. Thus, even assuming, *arguendo*, that District of Columbia law should be applied to determine if Respondent was obligated to provide coverage, the very statute which serves as the basis for the Petition for Writ of Certiorari would provide no coverage from Liberty Mutual. Petitioners' argument is, therefore, without merit.

## CONCLUSION

For the reasons set forth herein, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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